

Service Date: Dec. 12, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Application	)	UTILITY DIVISION
of MONTANA-DAKOTA UTILITIES, INC.,	)	
For Authority to Implement the	)	DOCKET NOS. 87.7.33
Gas Cost Tracking Procedure to	)	88.2.4
Establish Decreased Rates for Gas	)	88.5.10
Service.	)	

IN THE MATTER of the Application	)	
of MONTANA-DAKOTA UTILITIES, INC.,	)	
For Authority to Revise Rate 81,	)	DOCKET NO. 88.8.23
Rate 82, and Rate 117, and to	)	
Implement Firm Gas Transportation	)	
Service Rate 84.	)	ORDER NO. 5490a
	)	

ORDER ON MOTION FOR RECONSIDERATION

FINDINGS OF FACT

1. In this proceeding, the Public Service Commission (Commission) addresses four filings from the Montana-Dakota Utilities Company (MDU or Company). Three of the filings (Docket Nos. 87.7.33, 88.2.4, and 88.5.10) are applications to implement the Gas Cost Tracking Procedure set forth in MDU tariff sheets 87 and 88. These applications have been approved by the Commission on an interim basis. See Docket No. 87.7.33, Interim Rate Order No. 5280 (July 29, 1987); Docket Nos. 88.2.4 and 87.7.33, Interim Order No. 5280a (March 22, 1988); Docket No. 88.5.10, Interim Order No. 5346 (May 27, 1988).

2. In addition to the narrow issue of gas cost normally considered in gas tracker proceedings, the Commission indicated in a procedural order that three other issues would be considered in these dockets: 1) Whether MDU's tariff sheets 87 and 88 should be modified or eliminated; 2) Whether MDU is a full requirements customer of Williston Basin Interstate Pipeline Company (WBIP); and 3) Whether MDU, consistent with its obligation to provide a reliable supply of gas at the least possible cost, could procure an alternate supply of gas for any

of its Montana markets, either through direct interconnection with other interstate or intrastate pipelines, or by any other means. Included in this last issue the Commission indicated it was especially interested in the feasibility of bypassing WBIP by procuring gas from the Montana Power Company to supply MDU's Billings market. See Notice of Application and Proposed Procedural Schedule (June 30, 1988); Notice of Application and Notice of Procedural Order (August 22, 1988); and Procedural Order (August 22, 1988).

3. The fourth filing addressed here (Docket No. 88.8.23) is an application by MDU to revise its General Gas Transportation Service Rate 81, Industrial Gas Transportation Service Rate 82, and Rules Covering Charges for Gas Utility Customer Services Rate 117. In addition, MDU requests in this Application approval to implement a new Firm Gas Transportation Service Rate 84. This Application was also approved on an interim basis. See Docket No. 88.8.23, Interim Order No. 5377 (October 31, 1988).

4. The Commission consolidated these four dockets for hearing by its Procedural Order issued August 22, 1988. An opportunity to intervene was properly noticed and a procedural schedule was established allowing for discovery and the submission of pre-filed testimony. Intervention was granted to the Montana Consumer Counsel (MCC) and the Montana Power Company (MPC). The MCC actively participated in the proceedings. A hearing was held beginning on March 22, 1989, and ending March 24, 1989. Extensive briefs were submitted by both MDU and MCC.

5. On September 18, 1990, the Commission approved Order No. 5490, which disposed of all matters pending in this proceeding.

6. Following a request from MDU, on October 30, 1990, the Commission issued a Notice of Staff Action which extended the time period to file for reconsideration of Order No. 5490 to November 9, 1990.

7. On November 9, 1990, the Commission received MDU's Motion For Reconsideration (Motion) of Order No. 5490.

8. On November 19, 1990, the Commission waived the 10-Day Rule concerning ruling on motions for reconsideration and extended its time in this proceeding 20 days.

9. On December 10, 1990, the Commission extended its time for ruling on motions for consideration in this proceeding an additional 20 days.

10. MDU's Motion is composed of four parts: Introduction; Structural Defects; Technical Problems; and A Final Perspective. Each part contained sections addressing specific MDU concerns.

#### Introduction

11. In its Introduction, MDU provides background information concerning this proceeding, including Order No. 5490. MDU also lists the areas of concern in Order No. 5490. (Motion, pp. 2-3)

#### Structural Defects

A. THE COMMISSION'S ORDER HAS NO VALID AND ENFORCEABLE ORDERING PROVISIONS.

12. In its Motion, MDU says that Order No. 5490 has no valid and enforceable ordering provisions. MDU quotes paragraphs 1 and 2 of the Order section of Order No. 5490 and says that those two provisions are "wholly inadequate" to inform MDU of how to comply with the Commission's decision. The Company also expresses concern over the use of the words "should" and "must." In general, MDU believes that the Commission's mandates in Order No. 5490 are unclear and ambiguous. (Motion, pp. 3-5)

13. The Order section of Order No. 5490 adopts the commands and prohibitions contained throughout Order No. 5490 and thereby establishes that they are orders. The Commission finds no law that prohibits this practice. The Company references none. Absent any law to the contrary or any law prescribing an order format other than that used by the Commission, the Commission determines that it may make a valid and enforceable order by reference to any and all intrinsic parts of the entire order containing a command, prohibition, or like directive, whether those parts are entitled facts, analysis, conclusions, or otherwise.

14. The Commission also determines that the Company is not unfamiliar with the Commission's format in Order No. 5490. The Commission historically and customarily includes, or may include, analysis, conclusions, and directives in an order at the place

most applicable and understandable.

15. The Commission would not deny that the Company has a right to be reasonably informed of what it is that the Commission is commanding or prohibiting in Order No. 5490. Order No. 5490, however, reasonably informs the Company under any relevant standard of review. The findings are sufficient to permit the Company to follow the reasoning process of the agency. The conclusions are sufficiently supported by reasoned opinion to render their basis reasonably ascertainable.

16. The Commission finds that MDU is fully capable of reading and comprehending Order No. 5490, regardless of the size of the order. Therefore, based on the above discussion, the Commission finds that MDU's Motion in this area of concern is DENIED.

B. THE COMMISSION MUST IMPLEMENT NEW FILING REQUIREMENTS BY RULE.

17. The Company may apply for Commission authority to change its rates in two general ways. One is through the Company's tariffed tracker procedure and the other is through a general rate case. The tracker procedure is based in statute but it is established by Commission order. It may be amended, modified, or abolished by Commission order. The general rate case procedure is based in statute. It is governed by Commission rules. In neither procedure is it prescribed by statute, rule, or order that the filing requirements must be set forth by rule. Merely because some filing requirements are by rule does not mean that all filing requirements be by rule. Filing requirements may be lawfully established by statute, rule, or order.

18. The Commission finds that there have been several instances where the Commission has required in Orders certain information to be filed in a utility's next filing, and the Commission has always expected that information to be provided in the prescribed manner. Therefore, based on the above discussion, the Commission finds that MDU's Motion in this area of concern is DENIED.

C. THE COMMISSION CANNOT IMPLEMENT MANDATORY LEAST COST

PLANNING WITHOUT ENABLING LEGISLATION AND A PROPER FRAMEWORK OF ADMINISTRATIVE RULES.

19. The Commission addresses this part of the Structural Defects section of MDU's Motion in Finding of Fact No. 21 below.

D. THE COMMISSION CANNOT ORDER MONTANA-DAKOTA TO MAKE MANDATORY AVOIDED COST PURCHASES WITHOUT ENABLING LEGISLATION AND A PROPER FRAMEWORK OF ADMINISTRATIVE RULES.

20. The Commission will also address this part of the Structural Defects section of MDU's Motion in Finding of Fact No. 21 below.

E. THE COMMISSION IS PROHIBITED FROM ADDRESSING MANDATORY AVOIDED COST PURCHASES IN THIS DOCKET.

21. The Commission will address the commentary in MDU's motion that involves parts "C", "D" above and this part, part "E". First, the Commission finds merit in withdrawing the requirements included in the Gas Acquisitions Strategy section of Order No. 5490. The Commission takes this action in light of the opportunity that will avail itself to investigate least cost planning in the Commission's Docket No. 90.8.49 NOI. MDU should interpret this finding to mean the Commission believes MDU's current gas acquisition practices reflect neither a best, a least cost or a cost minimizing effort on the Company's part and on behalf of MDU's Montana gas customers. The logical reasoning for this finding is well stated in Order No. 5490.

F. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO REQUIRE THE STUDY DESCRIBED IN FINDING OF FACT 130.

22. MDU says in its Motion that the Commission's Finding of Fact No. 130 in Order No. 5490 is in excess of its authority and attempts to utilize procedures which do not comply with MAPA. The Company explains that the Commission is free to conduct its own study in accordance with MAPA, and MDU expresses deep concern that the Commission is attempting to unlawfully impose upon MDU a general and undefined burden of proving that its purchases from WBIP are prudent. Finally, MDU offers to provide information that MCC has indicated an interest in seeing. (Motion, pp. 11-

12)

23. Consistent with the decisions in above Findings of Fact concerning least cost planning, the Commission agrees with MDU that the study discussed in Finding of Fact No. 130 of Order No. 5490 does not have to be provided as part of this proceeding. Therefore, the Commission finds that MDU's Motion in this area of concern is GRANTED.

G. THE COMMISSION IS PROHIBITED FROM REVIEWING THE ADVOCACY OF MONTANA-DAKOTA BEFORE FERC.

24. In its Motion, MDU says that the Commission is prohibited by the First Amendment of the United States Constitution and Article II, Section 7 of the Montana Constitution from conditioning MDU gas rate changes on a Commission review of the Company's advocacy before the FERC. MDU says that the Commission's decision contains mutually inconsistent findings of fact on this subject and states that the reason for the Commission's threat to reflect its evaluation in MDU's rates is to influence and control the advocacy of MDU. The Company describes this approach as attempted coercion. (Motion, pp. 12-13)

25. As stated in Finding of Fact No. 79 of Order No. 5490, the Commission finds that MDU's concerns about its First Amendment rights are misplaced because the Commission is not attempting to dictate what MDU must say at the FERC. In Finding of Fact No. 84 of Order No. 5490, the Commission expresses its apprehension about MDU's level of concern over the cost of purchased gas and expresses its hope that open access will result in long-term benefits for MDU's Montana gas customers. The Commission concludes this section of Order No. 5490 by requiring MDU to detail its positions before the FERC concerning WBIP filings in its gas tracker filings and by making no adjustment to MDU's gas rates due to its actions and positions before the FERC on WBIP matters.

26. In this order, the Commission emphasizes no intent to dictate what, if anything, MDU says to the FERC on WBIP matters. However, the Commission continues to expect MDU to detail its positions before the FERC in all future gas tracker filings.

Like all information concerning the operations and policies of MDU, the Commission will evaluate this information in the context of its role as the regulator of MDU's gas operations. Therefore, based on the above discussion, the Commission finds that MDU's Motion concerning this subject is DENIED.

#### Technical Problems

A. THE COMMISSION SHOULD PERMIT MONTANA-DAKOTA TO UTILIZE ITS ORIGINALLY PROPOSED BALANCING PROVISION.

27. Part A of the Technical Problem section of MDU's motion regards the Commission's findings on MDU's gas balancing proposals in Special Term and Condition (ST&C) No. 9. The Commission revised MDU's proposals in several respects due, in part, to MCC's general concern with MDU's proposals and its own concerns. MCC criticized the free ride that results from not imposing penalties when imbalances vary within a 104 percent range (also see TR 245). MCC expressed concern over who, MDU or the customers, should receive any benefits of penalties imposed when an imbalance exceeds 110 percent.

28. MDU's motion holds that the Commission's order would stifle the transport of gas. MDU should rest assured that the Commission would not knowingly set standards that allegedly cause gas transportation to be uneconomic. On reconsideration the Commission grants MDU's motion as regards this balancing issue. Thus, the current procedural process is well served by the opportunity afforded MDU to seek reconsideration of a Commission decision. However, the Commission expects MDU to address its balancing proposals in the cost of service docket to be filed prior to January ending 1991.

29. The Commission finds that if MDU is truly concerned with stifling gas transportation, as its motion suggests, it may want to expedite filing a cost of service study to address the apparent discriminatory flavor of those Company proposals reviewed in Order No. 5490.

30. While the Commission reinstates MDU's balancing proposals, it does so with apprehension. First, the record evidence was deficient in this docket on many counts, one of which involves MDU's balancing ST&C proposals. Second, a careful

reading of Findings of Facts numbered 162 through 174 of Order No. 5490 should make clear MDU's simple balancing proposals relate to other ST&C proposals.

31. In fact, MDU's June 1990 temporary revision to its own balancing proposals illustrate the nonfunctionality of the Company's proposals. Recall in June 1990 MDU sought "immediate" authorization to waive the penalty provisions noted in its General Terms and Conditions for transport rates 81, 82 and 84. For this and other reasons MDU's balancing proposals seem faulty, but revisiting of the issue could be postponed until the expected late 1991 cost filing.

32. One revision to MDU's balancing penalties regards which tariff applies to imbalance penalties of less than 110 percent. MDU did not appear to ask for reconsideration on this issue and the Commission reaffirms its earlier finding for purposes of clarity (see Order No. 5490, Finding No. 174).

B. THE COMMISSION SHOULD PERMIT MONTANA-DAKOTA TO RECOVER MDQ PENALTY COSTS THROUGH A GAS COST TRACKING ADJUSTMENT.

33. In its Motion, MDU references Finding of Fact No. 109 in Order No. 5490 concerning MDQ penalty costs. The Company pointed out that the Commission's decision to allow recovery of such costs only in a general rate case creates a bias in favor of maintaining high MDQ reservations, which is contradictory to the Commission's discussion in Order No. 5490 that MDU should be minimizing its MDQ reservations on the WBIP system. (Motion, pp. 16-17)

34. The Commission agrees with MDU that mixed signals may have been inadvertently sent to MDU on this matter and finds, therefore, that MDU's Motion on this subject is GRANTED. In granting this portion of the Motion, the Commission emphasizes its position that MDU should be making a diligent effort to balance the goals of minimizing its MDQ reservations on the WBIP system while also reasonably guarding against the incurrence of MDQ penalty costs. Therefore, the Commission finds that MDU can include in gas tracker filings any MDQ penalty costs incurred. However, MDU must also clearly identify, quantify, and explain such costs in testimony and separate exhibits so that the



Commission can readily isolate these costs and determine the propriety of whether or not these costs should be reflected in Montana gas rates.

#### A Final Perspective

35. This entire section of MDU's Motion is devoted to commentary on MDU's level of gas costs. MDU first says that the Commission does not cite "record evidence" to support statements that MDU is located "in the midst of some of the lowest cost gas fields in the country" and that WBIP's sales prices "have been some of the highest in the U.S." MDU then argues that its gas rates are among the lowest in the nation, and that the comparison between WBIP's admittedly high unit rates with MDU's sales rate "is not meaningful" considering the unique nature of the two systems. MDU concludes in the last sentence of its Motion, "Regardless of how the total cost of providing gas service divides up between the two companies, the ultimate burner tip price paid by the Montana-Dakota customer is modest." (Motion, pp. 17-18)

36. Assuming this section of the Motion requires a decision in this order, the Commission finds that MDU's Motion on this subject is DENIED. Concerning MDU's initial concern of lack of record evidence to support certain statements in Order No. 5490, the Commission references PSC Data Request No. 25 and cross-examination of Mr. Maichel (TR, pp. 427-430; pp. 506-508) in support of these statements. Interestingly, MDU's concern over the record evidence is purely procedural; the Company does not argue the truth of these statements.

37. MDU argues that, because its gas rates are low compared to the nation, WBIP's high gas rates compared to other pipelines should be excused. The Commission strongly disagrees with this rationale. The Commission does not regulate utilities on the basis of where the company lies in the nation's average of utility rates. If that were the case, the captive coal costs of PP&L and MPC would not have been of relative concern to the Commission over the last decade or so. MDU's ratepayers deserve scrutiny of the MDU/WBIP affiliate gas purchase transactions to ensure that reasonable levels of purchased gas costs, as well as

all other cost aspects of MDU's operations, are being reflected in MDU's gas rates to its Montana customers.

38. The final comment the Commission will make regarding this last section of MDU's Motion relates to the last sentence in this section, which reads, "Regardless of how the total cost of providing gas service divides up between the two companies, the ultimate burner tip price paid by the Montana-Dakota customer is modest" (Motion, p. 18). The Commission finds that MDU's view expressed in that sentence is quite troublesome and totally inappropriate. MDU's statement endorses a total company concept and intimates that ratepayers and the Commission should not be remotely concerned with the affiliate transactions of WBIP and MDU. The attitude reflected is that MDU is perfectly content to buy gas from its affiliate at any cost, and customers should not care because MDU's rates are "modest." In its role as regulator, this Commission is highly concerned about matters such as affiliate transactions and the determination of reasonable levels of all costs incurred by utilities. The ultimate burner tip price paid by MDU's customers must reflect effective Commission scrutiny of utility costs and policies. MDU's statement reflects a priority for total company welfare over the deserving needs of customers. Such blatant disregard of MDU's obligation as a utility operating in Montana to provide reliable service at the lowest possible cost is both alarming and disappointing to the Commission.

#### CONCLUSIONS OF LAW

1. All Findings of Fact are hereby incorporated as Conclusions of Law.

2. Applicant, Montana-Dakota Utilities Company, provides natural gas service within the State of Montana and as such is a "public utility" within the meaning of Section 69-3-101, MCA.

3. The Montana Public Service Commission properly exercises jurisdiction over the Applicant's Montana rates and operations pursuant to Title 69, Chapter 3, MCA.

#### ORDER

THEREFORE THE MONTANA PUBLIC SERVICE COMMISSION ORDERS THAT:

1. Applicant, Montana-Dakota Utilities Company, is hereby ordered to adhere to and to abide by all Findings of Fact in this Order On Motion For Reconsideration.

2. The Commission GRANTS the following portions of Applicant's Motion For Reconsideration: Part F. of the "Structural Defects" section; Part A. of the "Technical Problems" section; and Part B. of the "Technical Problems" section. All other portions of Applicant's Motion For Reconsideration are DENIED.

DONE IN OPEN SESSION at Helena, Montana, this 18th day of December, 1990, by a 5 - 0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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HOWARD L. ELLIS, Chairman

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DANNY OBERG, Vice Chairman

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WALLACE W. "WALLY" MERCER, Commissioner

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JOHN B. DRISCOLL, Commissioner

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REX MANUEL, Commissioner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.